

**REMARKS**

This responds to the Office Action mailed on July 8, 2008.

No claims are amended, no claims are canceled, and no claims are added; as a result, claims 1-28 are now pending in this application.

**§102 Rejection of the Claims - Halbert**

Claims 1, 3-4, 7-8, 10-11, 14-15, 17-18, 21-22, 24-25 and 28 were rejected under 35 U.S.C. § 102(e) for anticipation by Halbert et al. (U.S. 6,101,484; hereinafter "Halbert").

Applicants respectfully submit that the rejection of the claims 1-28 under 35 U.S.C. § 102(b) is defective for the reason that Halbert does not disclose each and every limitation of the independent claims of the present application.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."<sup>1</sup>

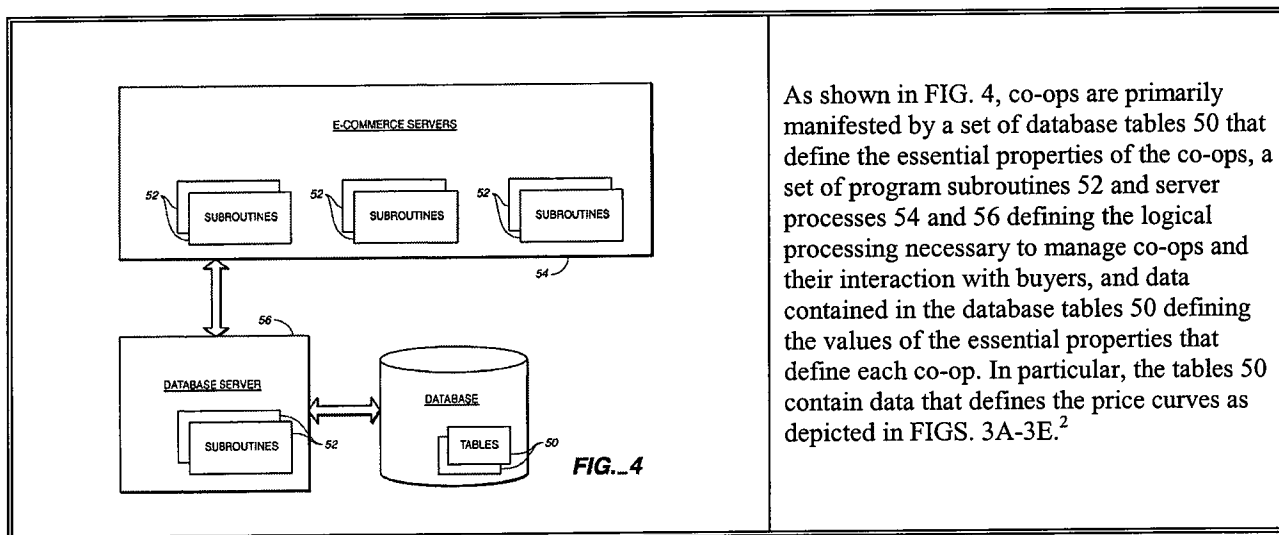
Applicants believe that the issue of patentability over Halbert is best understood with regard to claim 1 which includes the following limitations:

*a fixed price-setting process executed from the memory by the processor to cause the processor to facilitate the operation of a network-based auction price setting process for a listing of an item, the fixed price-setting process to provide a fixed price offer for the item and to publish the fixed-price offer on the listing based on a criterion.*

---

<sup>1</sup> *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, USPQ2d 1051, 1053 (Fed. Cir. 1987)

In seeking to show anticipation of the above limitation, the Office Action highlights the following in Halbert:



The above material from Halbert relates a co-op. A co-op includes program subroutines, server processes, and logical processing. “The co-op enables individual buyers to leverage their combined purchasing power to achieve an economic bargain fair superior than that attainable by any one buyer acting alone. This superior bargain most often will be reflected in terms of a lower price.”<sup>3</sup> “In order to join a co-op, each buyer must determine the maximum price at which (or below) he or she is willing to purchase the feature item. Such amount is specified in his or her binding purchase offer.”<sup>4</sup>

<sup>2</sup> Halbert, col. 7, lines 36-44

<sup>3</sup> Halbert, col. 1, lines 23-27

<sup>4</sup> Halbert, col. 3, lines 3-6

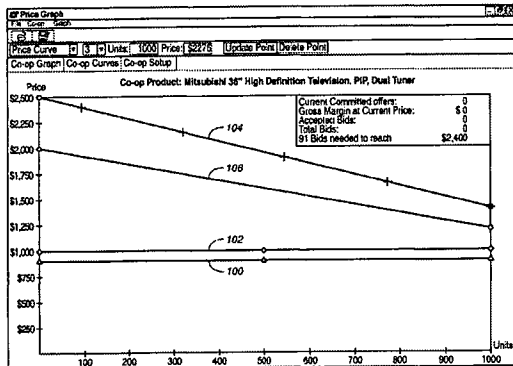


FIG. 3A

An example of a price curve set as initially established during the process of setting up a buying co-op is shown in FIG. 3A, in this case for a Mitsubishi 36" high definition television set. In this simple model, a constant cost of \$875 as shown at 100 and a constant minimum price of \$1,000 for which offers will be recorded as shown at 102 are depicted. A price curve 104 shows a declining price for the product with an increasing number of acceptable offers for the product, up to a maximum of 1,000 units, which is the usual case. In principle, an increasing price for the product could be provided in the case of a product with a limited supply, such as a limited edition collectible. Curve 106 represents a minimum offer threshold which will be used by the market equilibrium manager to modify the price curve 104 as offers are submitted by potential buyers. As long as an offer is above any minimum price 102, it will be recorded, but if it is below the minimum offer threshold 106 at that point in the co-op, it will not be used to modify the price curve 104 or the minimum offer threshold curve 106.<sup>5</sup>

The above material from Halbert relates to a price curve. The price curve is established by setting up a buying co-op for a product. The above price curve shows a declining price with an increasing number of acceptable offers to purchase the product.

In contrast to Halbert, claim 1 requires two processes, "*a fixed price-setting process*" and "*a network-based auction price setting process.*" Further, claim 1 requires "*a network-based auction price setting process for a listing of an item.*" For example, the present application presents an embodiment of some of the limitations of claim 1 as follows:

<sup>5</sup> *Id.*, col. 7, lines 45-63

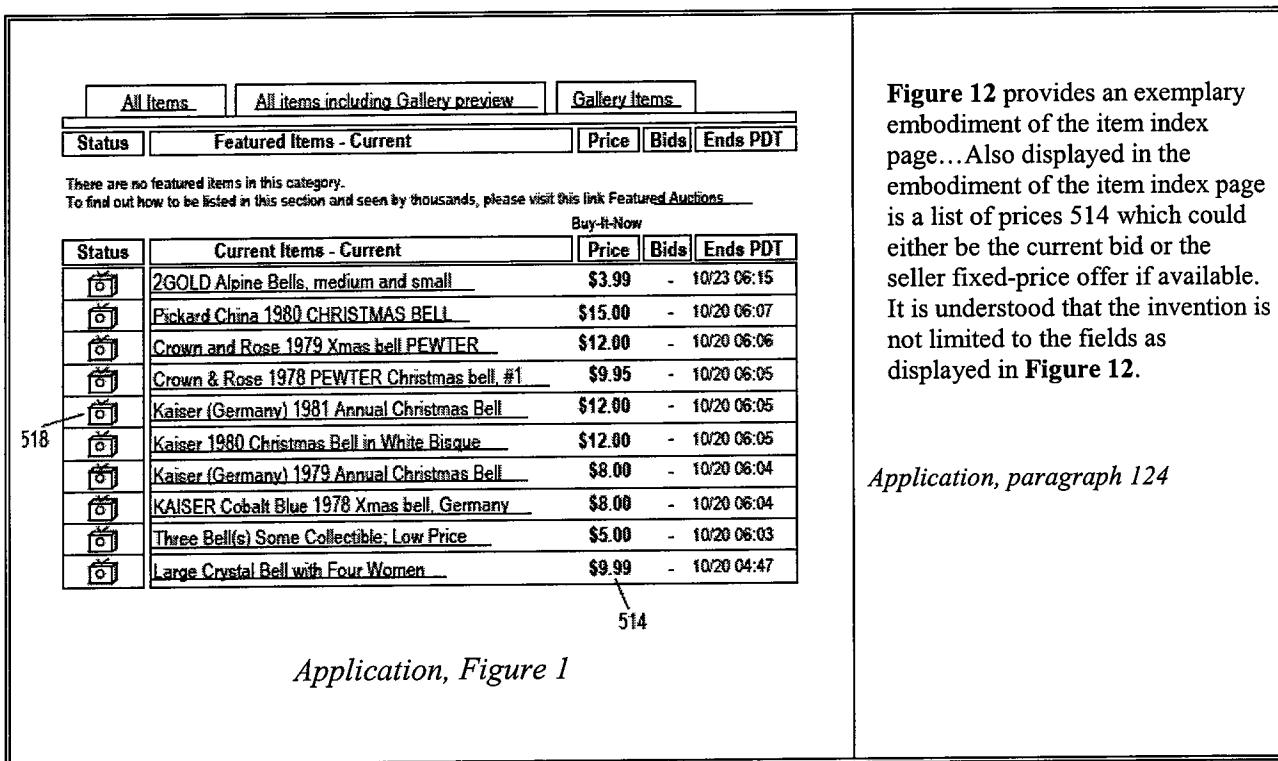


Figure 12 provides an exemplary embodiment of the item index page...Also displayed in the embodiment of the item index page is a list of prices 514 which could either be the current bid or the seller fixed-price offer if available. It is understood that the invention is not limited to the fields as displayed in Figure 12.

Application, paragraph 124

The above provides an embodiment of an item index page. The example item index page includes a list of example items respectively associated with a list of example prices 514 as described above. Further, paragraph 124, quoted above and to the right, states, "the list of prices 514 which could either be the current bid or the seller fixed-price offer if available.." Claim 1 requires two processes, a fixed price-setting process and a network-based auction price setting process. The fixed price-setting process is distinct from the network-based auction price setting process and is to provide a fixed price offer for the item.

In contrast to the quoted limitations of claim 1, Halbert relates to purchase offers submitted by buyers to form a co-op that is used to establish a price curve, the co-op including program subroutines, server processes, and logical processing. Nevertheless, nowhere in the above material does Halbert disclose "the operation of a network-based auction price setting process for a listing of an item," as required by claim 1. Indeed, Halbert relates "purchase offers." Nevertheless program subroutines, server processes, and logical processing that receive and establish a "price curve" based on purchase offers cannot be said to constitute "a network-

*based auction price setting process for a listing of an item.*” Specifically, a server process to establish a “price curve” based on purchase offers is not the same as an “*auction price setting process*,” as required by claim 1. Halbert therefore cannot be said to anticipate the above quoted limitation because Halbert relates program subroutines, server processes, and logical processing that receive and establish a “price curve” based on purchase offers and claim 1 requires “*a network-based auction price setting process for a listing of an item.*”

The above remarks are similarly applicable to a consideration of independent claims 8, 15, and 22.

As dependent claims are deemed to include all limitation of claims from which they depend, the rejection of claims 3-4, 7, 10-11, 14, 17-18, 21, 24-25 and 28 under 35 U.S.C. § 102(e) is also addressed by the above remarks, and the amendments contained herein.

In summary, Halbert does not disclose each and every limitation of claim 1, as required to support a rejection of this claim under 35 U.S.C. § 102.

**CONCLUSION**

Applicants respectfully submit that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney at 408-278-4046 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
408-278-4046

Date 10.08.2008

By Mark R. Vatuone  
Mark R. Vatuone  
Reg. No. 53,719

**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 8 day of October 2008.

CHRIS BRETU

Name

[Signature]  
Signature